

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA  
OAKLAND DIVISION

MARK A. PORRAS,

Petitioner,

No. C 12-3005 PJH (PR)

vs.

**ORDER FOR RESPONDENT  
TO SHOW CAUSE**

G. D. LEWIS, Warden,

Respondent.

Petitioner, a state prisoner incarcerated at Pelican Bay State Prison (PBSP), has filed a pro se petition for a writ of habeas corpus under 28 U.S.C. § 2254. He has paid the filing fee.

**BACKGROUND**

Petitioner challenges the retroactive application of changes in California Penal Code section 2933.6 to him. Effective January 25, 2010, section 2933.6 was changed to provide that validated gang members or associates are ineligible to earn credits off their sentence while housed in a Secured Housing Unit (SHU), Psychiatric Services Unit (PSU) or Administrative Segregation Unit (ASG).

Petitioner unsuccessfully sought relief from the state courts until the Supreme Court of California denied his final state petition on March 28, 2012.

**DISCUSSION**

**A. Standard of Review**

This court may entertain a petition for writ of habeas corpus "in behalf of a person in custody pursuant to the judgment of a State court only on the ground that he is in custody in violation of the Constitution or laws or treaties of the United States." 28 U.S.C.

§ 2254(a); *Rose v. Hodges*, 423 U.S. 19, 21 (1975). Habeas corpus petitions must meet heightened pleading requirements. *McFarland v. Scott*, 512 U.S. 849, 856 (1994). An application for a federal writ of habeas corpus filed by a prisoner who is in state custody pursuant to a judgment of a state court must “specify all the grounds for relief available to the petitioner ... [and] state the facts supporting each ground.” Rule 2(c) of the Rules Governing § 2254 Cases, 28 U.S.C. foll. § 2254. “[N]otice’ pleading is not sufficient, for the petition is expected to state facts that point to a ‘real possibility of constitutional error.’” Rule 4 Advisory Committee Notes (quoting *Aubut v. Maine*, 431 F.2d 688, 689 (1st Cir. 1970)). “Habeas petitions which appear on their face to be legally insufficient are subject to summary dismissal.” *Calderon v. United States Dist. Court (Nicolaus)*, 98 F.3d 1102, 1108 (9th Cir. 1996) (Schroeder, J., concurring).

## **B. Legal Claims**

The Ex Post Facto Clause forbids the states from statutorily cancelling time credits and making ineligible for early release any prisoner who was previously eligible. See *Lynce v. Mathis*, 519 U.S. 433, 437-39, 447-49 (1997) (retroactive cancellation of prison credits has impermissible effect of lengthening period of incarceration in violation of Ex Post Facto Clause). Liberally construed, petitioner's ex post facto claim appears cognizable under § 2254 and merits an answer from respondent. See *Zichko v. Idaho*, 247 F.3d 1015, 1020 (9th Cir. 2001) (federal courts must construe pro se petitions for writs of habeas corpus liberally).

## **CONCLUSION**

1. The clerk shall serve by regular mail a copy of this order and the petition and all attachments thereto on respondent and respondent's attorney, the Attorney General of the State of California. The clerk also shall serve a copy of this order on petitioner.

2. Respondent shall file with the court and serve on petitioner, within sixty days of the issuance of this order, an answer conforming in all respects to Rule 5 of the Rules Governing Section 2254 Cases, showing cause why a writ of habeas corpus should not be granted. Respondent shall file with the answer and serve on petitioner a copy of all

1 portions of the state trial record that have been transcribed previously and that are relevant  
2 to a determination of the issues presented by the petition.

3 If petitioner wishes to respond to the answer, he shall do so by filing a traverse with  
4 the court and serving it on respondent within thirty days of his receipt of the answer.

5 3. Respondent may file a motion to dismiss on procedural grounds in lieu of an  
6 answer, as set forth in the Advisory Committee Notes to Rule 4 of the Rules Governing  
7 Section 2254 Cases. If respondent files such a motion, it is due fifty-six (56) days from the  
8 date this order is entered. If a motion is filed, petitioner shall file with the court and serve  
9 on respondent an opposition or statement of non-opposition within twenty-eight (28) days of  
10 receipt of the motion, and respondent shall file with the court and serve on petitioner a reply  
11 within fourteen days of receipt of any opposition.

12 4. Petitioner is reminded that all communications with the court must be served on  
13 respondent by mailing a true copy of the document to respondent's counsel. Petitioner  
14 must keep the court informed of any change of address and must comply with the court's  
15 orders in a timely fashion. Failure to do so may result in the dismissal of this action for  
16 failure to prosecute pursuant to Federal Rule of Civil Procedure 41(b). See *Martinez v.*  
17 *Johnson*, 104 F.3d 769, 772 (5th Cir. 1997) (Rule 41(b) applicable in habeas cases).

18 **IT IS SO ORDERED.**

19 Dated: August 7, 2012.

  
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PHYLLIS J. HAMILTON  
United States District Judge